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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/263,362	03/05/1999	PAUL JOHAN NEDERVEEN	112025-0115	1718

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EXAMINER

MOLINARI, MICHAEL J

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 09/30/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/263,362

Applicant(s)

NEDERVEEN ET AL.

Examiner

Michael J Molinari

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152) .
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 9 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Whitmire et al. (U.S. Patent No. 6,243,756).
3. Referring to claim 9, Whitmire et al. disclose a system comprising a plurality of network switches (network devices) configured in a stacked configuration (see column 6, lines 34-38, and see Fig. 1A), each switch having a plurality of ports (see abstract, lines 1-7, which states at least one port) including a probe port (see Fig. 3, #304) for receiving switch activity-related information (statistics, see column 3, lines 7-15) from other ports of the respective switch (see abstract, lines 1-7), a connection between the probe port of a first network switch to a monitoring probe (see Figure 1A, #116) that is separate and remote from the plurality of network switches (see Figure 1A); means for interconnecting the network switches through their respective probe ports (see Fig. 3); and means for selectively transmitting the switch activity-related information received at the probe ports of the network switches to the separate and remote monitoring probe one network switch at a time, through the probe port of the first network switch (see column 8, lines 20-50, note that the data is sent by the other switches to the first network switch through the

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probe port of the first network switch, which then transmits the data to the Management Agent), wherein the separate and remote monitoring probe converts the received switch activity-related information into network management-related information (see column 8, lines 20-50).

4. Referring to claim 11, Whitmire et al. disclose that said probe ports (see Fig. 5, #545) are solely for transmission of said activity-related information.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitmire et al. (U.S. Patent No. 6,243,756).

3. Referring to claim 1, Whitmire et al. disclose a system for use in gathering information (statistics) for use in managing a network (see column 3, lines 7-15), said system comprising: a plurality of network switches (multiple port repeaters, see column 6, line 38) logically organized in a stack configuration (see column 6, lines 34-38, and see Fig. 1A) so as to operate as a single logical switch (see column 4, lines 50-54 and column 6, lines 38-40 and see column 8, lines 5-10), each network switch having a plurality of ports (see Figure 8, Ports 1-12 at top of figure); an entity (management platform, see Fig. 1A, #116) separate and remote (see column 8, lines 23-26) from the plurality of switches for gathering said information (see column 8, lines 28-50); a multiplexer (multiple port repeater, see Fig. 1A, #102) separate from the plurality of network

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switches (they are physically and logically coupled, but they are still separate from one another, see column 6, lines 38-40) for selectively connecting, according to an arbitration scheme (backplane arbitration, see column 20, lines 61-67 and column 21, lines 1-11), said plurality of network switches one at a time (over the serial port or SLIP connection, see column 8, lines 45-46) to said single entity (see Fig. 1, #116), wherein each network switch is connected to said multiplexer by a separate connection (see Fig. 3, note that each multiple port repeater, 104-110, has a separate connection to #102), and transmits port activity-related data that are supplied to the remote entity via the multiplexer in accordance with the arbitration scheme, and are converted by the remote entity into network management-related information (see column 8, lines 28-50, note that line 35 refers to SNMP over IP. See also column 29, lines 51-53, column 23, lines 66-67, column 24, lines 1-67, and column 25, lines 1-9). Whitmire et al. differ from claim 1 in that they fail to disclose that the multiplexer is remote from the plurality of network switches in that Whitmire et al. shows the multiplexer as being a uniform distance from the other switches. However, it would have been obvious to a person with ordinary skill in the art at the time of the invention that the multiplexer would not need to be a uniform distance from the plurality of network switches and that, to increase the distance between the multiplexer and the plurality of network switches, one would merely need to use a longer connection medium or an extension medium to connect them, which would have been well within the ordinary skill in the art at the time of the invention. Therefore, it would have been obvious to a person with ordinary skill in the art at the time of the invention to have the multiplexer be remote from the plurality of network switches.

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1. Referring to claim 2, Whitmire et al. disclose the multiplexer as a remote monitoring probe (see column 23, lines 33-53 and note that the use of RMON in the management agent, which is part of the multiplexer, makes the multiplexer a remote monitoring probe according to RMON).
2. Referring to claim 3, Whitmire et al. disclose the multiplexer as a network hub (Ethernet repeater, see column 3, lines 57-65, and see column 1, lines 61-63).
3. Referring to claim 4, Whitmire et al. disclose the multiplexer as a media access unit (see column 2, lines 25-29, and see column 3, lines 1-2 and note that the use of token ring would make the multi port repeaters media access units).
4. Referring to claim 5, Whitmire et al. disclose that the said switches are configured to generate control signals for implementing said arbitration scheme (MASTER/TARGET, see column 20, lines 61-67 and column 21, lines 1-11).
5. Referring to claim 6, Whitmire et al. disclose that the multiplexer is configured to be controlled by said signals (see column 20, lines 61-67 and column 21, lines 1-11).
6. Referring to claim 7, Whitmire et al. disclose that said port activity-related data comprise switch port activity information (statistics, see column 3, lines 9-15. Also see Tables 1-4 for more detailed information about the statistics), and said switches are configured to permit user selection of particular switch port activity information to be supplied to the remote entity via the multiplexer (see column 4, lines 62-67 and column 5, lines 1-12).
7. Referring to claim 8, Whitmire et al. disclose program processes executed by said switches for carrying out said arbitration scheme (see column 20, lines 61-67 and column 21, lines 1-11).

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8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitmire et al. in view of Quoc et al. (U.S. Patent No. 6,092,214).

9. Referring to claim 10, Whitmire et al. disclose a method of determining a TARGET (slave) and MASTER (backplane arbitration, see column 20, lines 61-67 and column 21, lines 1-11), but differs from claim 10 in that it does not disclose that the TARGET/MASTER relationship results in an arbitration scheme for determining order in which the respective activity-related information of respective switches is provided to said probe. However, an arbitration scheme to determine order of delivery of management information is well known in the art. For example, Quoc et al. teach the use of an arbitration scheme to determine the order of delivery of network management data (see column 7, lines 61-67 and column 8, lines 1-67 and column 9, lines 1-3), which has the advantage of avoiding data collisions on the management bus. One skilled in the art would have recognized the advantage of using an arbitration scheme to determine the order of delivery of management data as taught by Quoc et al. Therefore, it would have been obvious to a person with ordinary skill in the art at the time of the invention to incorporate the arbitration scheme as taught by Quoc et al. in to the invention of Whitmire et al. to achieve the advantage of avoiding data collisions on the management bus.

### ***Response to Arguments***

4. Applicant's arguments filed 17 September 2003 have been fully considered but they are not persuasive.

5. Applicant has argued that Whitmire et al. fail to teach that the remote entity converts port activity-related information into network management-related information. However, Whitmire

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et al. do teach this limitation in column 8, lines 20-50. Specifically, Whitmire et al. state that the management platform may be a browser for accessing MIB objects stored within the repeaters.

A browser is used to convert the raw data into data that can be displayed on a user interface so that it can be accessed by a user or network operator (see column 29, lines 51-53) for performing network management functions.

6. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the multiplexer is separate and remote from the stacked configuration) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant has argued that the multiplexer is separate from the stacked configuration, but claim 1 recites the limitation that the multiplexer is separate and remote from the plurality of network switches. Therefore, the argument that the multiplexer is separate from the stacked configuration is moot. Furthermore, the examiner has shown that the multiplexer is separate and remote from the plurality of network switches. See paragraph 3 above.

7. Applicant has made the same arguments regarding claim 9 as regarding claim 1, and the examiner's response to the arguments is the same.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

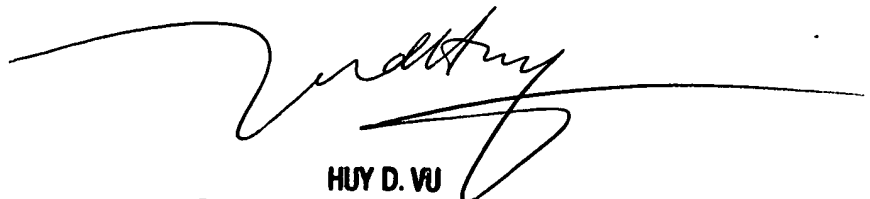
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Molinari whose telephone number is (703) 305-5742. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (703) 308-6602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



Michael Joseph Molinari



**HUY D. VU**  
SUPERVISORY PATENT EXAMINER  
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